

**THIS LICENSE IS AGREED** the 1st day of May, 2007

**BETWEEN**

1 The Medical Letter, Inc, with offices at [REDACTED]  
(("the Publisher"))

and

2 University of California San Diego with offices at: [REDACTED]  
[REDACTED] ("the Licensee")

**WHEREAS** the Publisher holds the rights granted under this Licence

**AND WHEREAS** the Licensee desires to use the rights and the Publisher desires to grant to the Licensee the licence to use the rights for the Fee, subject to the terms and conditions of this Licence.

**IT IS AGREED AS FOLLOWS: -**

**1. KEY DEFINITIONS**

1.1 In this Licence, the following terms shall have the following meanings: -

**Authorised Users** current members of the staff (whether on a permanent, temporary or contract basis) of the Licensee who are permitted to access the Secure Network from within the Licensee's Premises or from such other places where Authorised Users undertake their work for the Licensee (including but not limited to Authorised Users' offices and homes) and who have been issued by the Licensee with a password or other authentication.

**Commercial Use** Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, use by the Licensee or by an Authorised User of the Licensed Materials in the course of research, product development and related activity in the normal course of business does not constitute Commercial Use.

**Fee** The Fee set out in Schedule 1 or in new Schedules to this Licence which may be agreed by the parties from time to time.

**Licensee's Premises** The physical premises owned or operated by the Licensee, as specified in Schedule 2.

- Licensed Materials** the electronic material as set out in Schedule 1 or in new Schedules to this Licence that may be agreed by the parties from time to time.
- Secure Network** A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.
- Server** The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
- Subscription Period** That period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 1, regardless of the actual date of publication.

## 2. AGREEMENT

- 2.1 The Publisher agrees to grant to the Licensee the non-exclusive and non-transferable right, throughout the world, to give Authorised Users access to the Licensed Materials via a Secure Network subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee.
- 2.2 This Licence shall commence on [ May 15<sup>th</sup>, 2007] and shall remain in effect for one year from that date and shall then terminate unless the parties agree in writing to renew or extend the Licence on the same terms or as may be agreed in writing at the time.

## 3. USAGE RIGHTS

- 3.1 The Licensee, subject to clause 4 below, may:
- 3.1.1 Make such temporary local electronic copies of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorised Users.
- 3.1.2 Allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network.
- 3.1.3 Use the Licensed Materials as part of an integrated information service for Authorised Users that will include links between the Licensed Materials and the Licensee's own indexes, third party abstracting and indexing services and other information resources utilised by the Licensee.
- 3.1.4 Provide single printed or electronic copies of single articles at the request of individual Authorised Users.

- 3.1.5 Provide print or electronic copies of the Licensed Materials to national or international regulatory authorities for the purposes of, or in anticipation of, regulatory approval or patent and/or trademark applications or other legal or regulatory purposes in respect of the Licensee's products or services.
- 3.2 Authorised Users may, in accordance with the copyright law of The United States and subject to clause 4 below:
  - 3.2.1 Search, view, retrieve and display the Licensed Materials.
  - 3.2.2 Electronically save parts of the Licensed Materials for personal use.
  - 3.2.3 Print off a copy of individual articles or items of the Licensed Materials.
  - 3.2.4 Distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorised Users.
  - 3.2.5 Interlibrary Loan. Using secure electronic, paper, or intermediated means such as Ariel, Licensee may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.
- 3.3 Nothing in this Licence shall in any way exclude, modify or affect any of the Publisher's rights under the copyright laws of The United States.

#### 4. **PROHIBITED USES**

- 4.1 Neither the Licensee nor Authorised Users may:
  - 4.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
  - 4.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose;
  - 4.1.3 provide, by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part of the Licensed Materials; except for ILL.
  - 4.1.4 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network.
- 4.2 Publisher's explicit prior written permission must be obtained in order to:

- 4.2.1 use all or any part of the Licensed Materials for any Commercial Use;
- 4.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users;
- 4.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;
- 4.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## **5. PUBLISHER'S UNDERTAKINGS**

- 5.1 The Publisher warrants to the Licensee that the Licensed Materials used as contemplated by this Licence do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Licensee harmless from and against any actual loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this Licence for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Materials in any way not permitted by this Licence or materially breached this license. For this indemnity to apply, Licensee must: (i) provide Publisher with written notice of any claim within 30 days of receipt by Licensee, together with appropriate supporting documentation; (ii) cooperate with Publisher and provide Publisher with a full and fair opportunity to investigate, contest and/or compromise such claim and (iii) shall afford Publisher the right to choose legal representation for Licensee in connection with any claim or litigation.
- 5.2 The Publisher shall:
  - 5.2.1 Make the Licensed Materials available to the Licensee from the Server in the media, format and time schedule specified in Schedule 1. The Publisher will notify the Licensee at least ninety (90) days in advance of any anticipated change of specification in respect of access method, display or any other feature that may affect the manner in which Authorised Users access and make use of the Licensed Materials.
  - 5.2.2 use reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials on the date of publication of the printed version.
  - 5.2.3 provide the Licensee, within 30 days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material.
  - 5.2.4 use reasonable endeavours to ensure that the Server has adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating

via the World Wide Web, as such standards evolve from time to time over the term of this Licence.

- 5.2.5 use reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorised Users at all times and on a twenty-four hour basis, save for scheduled routine maintenance (which shall be notified to the Licensee in advance wherever possible).
- 5.2.6 provide adequate and competent technical support and assistance to enable the Licensee to make proper use of the Licensed Materials.
- 5.3 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being substantially and materially less useful to the Licensee, the Licensee may within thirty days of such notice treat such changes as a breach of this Licence under clause 8.1.2 and 8.4.
- 5.4 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.
- 5.5 Except as provided in clause 5.1, under no circumstances shall the Publisher be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Irrespective of the cause or form of action, the Publisher's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Licensee to the Publisher under this Licence in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Regardless of the cause or form of action, the Licensee may bring no action arising from this Licence more than twelve (12) months after the cause of action arises.

## **6. LICENSEE'S UNDERTAKINGS**

- 6.1 The Licensee shall take reasonable measures to:
  - 6.1.1 ensure that only Authorised Users are permitted access to the Licensed Materials;
  - 6.1.2 ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and that

- they are made aware of and undertake to abide by the terms and conditions of this Licence;
- 6.1.3 immediately upon becoming aware of any unauthorised use or other breach, inform the Publisher and take all steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
  - 6.1.4 issue passwords or other access information only to Authorised Users and ensure that Authorised Users do not divulge their passwords or other access information to any third party;
  - 6.1.5 provide the Publisher, within 30 days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 5.2.3. Should the Licensee make any significant change to such information, it will notify the Publisher not less than ten (10) days before the change takes effect.
- 6.2 The Licensee hereby acknowledges that the business of the Publisher is entirely dependent upon the Publisher's intellectual property rights in the Licensed Materials, and that any material and persistent breach thereof constitutes a fundamental breach of this Licence, in which event, notwithstanding clause 8, this Licence shall immediately terminate; the Publisher shall be entitled to immediate injunctive relief without any rebate of the Fee and without prejudice to any other rights or remedies to which it may be entitled.
- 6.3 The Licensee agrees to indemnify, defend and hold the Publisher harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the Publisher related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorised Users or any failure by the Licensee to perform its obligations in relation to this Licence
- 6.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee within thirty (30) days of signature and, and receipt of such payment shall be a condition of this License coming into effect. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

## **7. UNDERTAKINGS BY BOTH PARTIES**

- 7.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

## **8. TERM AND TERMINATION**

- 8.1 In addition to automatic termination (unless renewed) under clause 2.2, this Licence shall be terminated:
- 8.1.1 if the Licensee defaults in making payment of the Fee as provided in this Licence;

- 8.1.2 if either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party;
- 8.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
- 8.2 On termination all rights and obligations of the parties automatically terminate except as specifically provided in this Licence.
- 8.3 On termination of this Licence for cause, as specified in clauses 8.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users.
- 8.4 On termination of this Licence by the Licensee for cause, as specified in clause 8.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.
9. **GENERAL**
- 9.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.
- 9.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and signed by both parties.
- 9.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 9.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.
- 9.5 If either party shall come under the control of any third party other than that by which it is controlled at the date of this Licence, the other shall have the right immediately to terminate or renegotiate the terms of this Licence. Control shall mean either the ownership of more than fifty per cent (50%) of the ordinary share capital carrying the right to vote at general meetings or the power to nominate a majority of the board of directors.
- 9.6 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 5 days of posting.
- 9.7 Neither party's delay nor failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods,

governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

- 9.8 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 9.9 Either party's waiver or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 9.10 The parties recognize that irreparable damage may result in the event that the provisions of this paragraph shall not be specifically enforced. If any dispute arises concerning an action in violation of any such provision, the parties hereto agree that an injunction may be issued restraining such action pending determination of such controversy. The parties agree that in the event that either party breaches any material term of this Agreement, the non-breaching party may seek monetary damages in a court of competent jurisdiction.
- 9.11 This Licence shall be governed by and construed in accordance with California law; the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of the State of California. Licensee agrees to submit to the jurisdiction of the courts of the State of California.

**AS WITNESS** the hands of the parties the day and year below first written

**FOR THE PUBLISHER: [FULL NAME]**

Name: Yosef Wissner-Levy

Date: \_\_\_\_\_



## SCHEDULE 1

### LICENSED MATERIALS, SUBSCRIPTION PERIOD, ACCESS METHOD & FEES

A schedule dated: April 26, 2007 between The Medical Letter, Inc. and University of California San Diego.

#### *THE LICENSED MATERIALS*

<b>Title</b>	<b>Subscription Period</b>	<b>Format</b>	<b>Delivery Schedule</b>	<b>Fee</b>
The Medical Letter on Drugs and Therapeutics	1 (one) year	.pdf	updated Biweekly	\$. USD
Adverse Drug Interactions Online	1 (one) year	HTML	database updated Biannually	included
Drugs of Choice Online	1 (one) year	HTML	database Updated Annually	included
Treatment Guidelines Online	1 (one) year	HTML	updated monthly	included
Handbook of Antimicrobial Therapy	1 (one) year	HTML	updated Biannually	included
Medical Letter CME/CE 26 credits per year		HTML		included

#### *ACCESS METHOD*

- Authentication via IP address